Junior fellowships (PhD) at Erasmus School of Law

The Erasmus Graduate School of Law (EGSL) of the Erasmus University Rotterdam has two junior fellowships available for PhD candidates from universities outside the Netherlands, including candidates working in the field of private international law and European/international civil procedure, to visit the Erasmus School of Law for a period of three months. During this stay, the Junior Fellows will be able to discuss their research with senior staff members and interact with other PhD candidates in the framework of EGSL activities. Information about the Junior Fellowship programme can be found on this webpage.

Erasmus School of Law is also currently recruiting PhD Candidates, and also welcomes high quality proposals in the area of private international law and European, international or comparative civil procedure, in particular those that would fit into the multidisciplinairy and empirical research program Behavioural Approaches to Contract and Tort.

Job Opening at the University of Halle-Wittenberg (Germany): Native English Speaker

The following announcement has been kindly provided by Professor Dr. Christoph Kumpan, University of Halle-Wittenberg:

Professor Dr. Christoph Kumpan, University of Halle-Wittenberg, is looking to hire a highly skilled and motivated individual to work as a part-time (50%) research assistant beginning June 2016 or sooner. Applications should be submitted no later than April 15, 2016.

The position will entail close collaboration on a number of new and ongoing projects, focusing primarily on research on financial regulation.
The duties include reviewing English articles, editing English texts and the support in research and teaching, as well as teaching your own classes in English (2 hours per week), preferably in the areas of private law business/financial law.

This position is expected to last two years. The work location is Halle, Germany, a city close to Berlin, Germany.

Education:

- a university degree, preferably in law (JD)
- preferably, knowledge of financial law / securities regulation

Competencies:

- knowledge of English (native speaker or equivalent language skills)
- experience with reviewing and editing legal texts
- interest in business law
- ability to work in a team as well as independently

Hours/week: 20
Pay Frequency: Monthly
Payment: around 1.700 Euro (approx. 1.200 Euro net) per month
Possibility to obtain a doctoral degree (if faculty's requirements are met)

Required Job Seeker Documents: Resume, Cover Letter, complete transcripts.
The cover letter should include: A brief description of your career/study goals. A description of your experience with reviewing/editing legal texts. A brief description of any prior research assistance experience, or any other experience with legal research (e.g., thesis).

The University is committed to a policy of equal opportunity. Candidates with disabilities will be preferred in cases where they have the same qualifications as others.

If you are interested in this position, please send your application with the reference no. "Reg.-Nr. 3-1109/16-H" by April 15, 2016, preferably, via email to sekretariat.kumpan@jura.uni-halle.de

or to:
Martin-Luther-Universität Halle-Wittenberg, Juristische und Wirtschaftswissenschaftliche Fakultät, Juristischer Bereich, Lehrstuhl für Bürgerliches Recht, Wirtschaftsrecht, Internationales Privatrecht und Rechtsvergleichung, Universitätsplatz 3-5, 06099 Halle (Saale).

For more information (in German) see http://www.verwaltung.uni-halle.de/dezern3/Ausschr/16_308.pdf.
For further enquiries, please contact Professor Dr. Kumpan: sekretariat.kumpan@jura.uni-halle.de

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New Cases at the U.S. Supreme Court: CVSG Orders Concerning Private International Law, Sovereign Immunity and International Arbitration

As explained in a previous post from a few years back, if the Justices of the United States Supreme Court are considering whether to grant a petition for certiorari and review a decision from the Courts of Appeals, and they think the case raises issues on which the views of the federal government might be relevant—but the government is not a party—they will order a CVSG brief. "CVSG" means "Call for the Views of the Solicitor General." In the past two months, the Court ordered CVSG briefs in two new cases concerning matters of private international law, sovereign immunity and international arbitration.

If the issues are interesting to the Justices of the Supreme Court, and are about to be addressed by the U.S. Executive branch, then they should, *ipso facto*, be interesting to the practicing bar as well. The fact that each of these cases involve claims being made against foreign sovereigns makes them even more interesting

for international dispute resolution lawyers steeped in the crossroads of litigation, commercial and investment arbitration. Below is a brief review of these two cases and the interesting issues being raised.

The first case is *Belize Social Development Ltd. v. Government of Belize*. It involves the relatively uncommon juxtaposition of arbitration award enforcement and the doctrine of *forum non conveniens*. In that case, a private company had a contractual dispute with the government of Belize, and obtained an arbitration award of $38 million. It then sought to confirm the award in the United States. Belize defended on numerous grounds, including by arguing that the arbitration exception to the Foreign Sovereign Immunities Act did not apply because the contract was entered without proper legal authority in Belize, and by asserting that the New York Convention does not mandate recognition and enforcement where, as here, the dispute was not purely a "commercial" one, but rather promised favorable tax treatments. These defenses were dismissed by the D.C. Circuit; Ted Folkman has discussed that decision on Letters Blogatory.

The other unsuccessful defense raised by the debtor is now the subject of a petition for certiorari before the Supreme Court. The basic question is whether a party may dismiss a petition to recognize and enforce an arbitration award under the doctrine of *forum non conveniens*. The District Circuit held that a foreign forum is *per se* inadequate—and thus ineligible as a *forum conveniens*—because the focus of a recognition and enforcement action (*viz*. U.S.-based assets) cannot be reached by a foreign court. The D.C. Circuit affirmed this holding without any explication. This holding plainly splits from the Second Circuit, which has affirmed the *forum non conveniens* dismissal of recognition and enforcement actions when the alternative forum has some assets of the debtor, and thus offers the possibility of a remedy. This case is complicated by the fact that the Belize Supreme Court has issued an injunction against enforcement proceedings, and the Caribbean Court of Justice has held that the Award convenes public policy.

The decision below and the parties' briefs before the Court can be found here.

The second case is *Helmerich & Payne Int'l Drilling Co. et al v. Bolivarian Republic of Venezuela*. This case concerns the a lawsuit by a U.S. company regarding breaches of contract by PdVSA and the expropriation of its assets in Venezuela. The claims were brought under both the expropriation and commercial activity exceptions to the FSIA; the District Court permitted the

claims to proceed under the latter but not the former. The D.C. Circuit flipped those conclusions, allowing the expropriation but not the contract claims to proceed, and remanded the case. Both sides have filed crossing petitions for a writ of certiorari, presenting the following questions.

> *(1) Whether, under the third clause of the Foreign Sovereign Immunities Act of 1976, a breach-of-contract action is "based … upon" any act necessary to establish an element of the claim, including acts of contract formation or performance, or solely those acts that breached the contract;*
>
> *(2) whether, under Republic of Argentina v. Weltover, a breaching party's failure to make contractually required payments in the United States causes a "direct effect" in the United States triggering the commercial activity exception where the parties' expectations and course of dealing have established the United States as the place of payment, or only where payment in the United States is unconditionally required by contract.*
>
> *(3) Whether, for purposes of determining if a plaintiff has pleaded that a foreign state has taken property "in violation of international law," the Foreign Sovereign Immunities Act recognizes a discrimination exception to the domestic-takings rule, which holds that a foreign sovereign's taking of the property of its own national is not a violation of international law;*
>
> *(4) whether, for purposes of determining if a plaintiff has pleaded that "rights in property taken in violation of international law are in issue," the FSIA allows a shareholder to claim property rights in the assets of a still-existing corporation; and*
>
> *(5) whether the pleading standard for alleging that a case falls within the FSIA's expropriation exception is more demanding than the standard for pleading jurisdiction under the federal-question statute, which allows a jurisdictional dismissal only if the federal claim is wholly insubstantial and frivolous.*

The decision below and the parties briefs before the Court can be found here and here.

What the Solicitor General says about these issues and whether the Court takes

the cases will not be known until the next Term, which begins in October.

Job Opening: Research Assistant in Private International Law at the University of Halle-Wittenberg (Germany)

The following announcement has been kindly provided by Professor Dr. Christoph Kumpan, University of Halle-Wittenberg:

Professor Dr. Christoph Kumpan, University of Halle-Wittenberg, is looking to hire a highly skilled and motivated individual to work as a part-time (50%) research assistant beginning May 2016. Applications should be submitted no later than April 15, 2016.

The position will entail close collaboration on a number of new and ongoing projects, focusing especially on research on private law, international private law and business law.
The duties include the support in research and teaching in private law and private international law, as well as teaching your own classes (2 hours per week, in English or German), in particular in the areas of private law and/or private international law.

This position is expected to last three years. The work location is Halle, Germany, a city close to Berlin, Germany.

Education:

- a university law degree (e.g., JD)

Competencies:

knowledge of English required, preferably also Spanish or French
knowledge of German of advantage
knowledge of private international law
ability to work in a team as well as independently

Hours/week: 20
Pay Frequency: Monthly
Payment: around 1.700 Euro (approx. 1.200 Euro net) per month
Possibility to obtain a doctoral degree (if faculty's requirements are met)

Required job seeker documents: resume, cover letter, complete transcripts.
The cover letter should include: A brief description of your career/study goals. A brief description of any prior research assistance experience, or any other experience with legal research (e.g., thesis).

The University is committed to a policy of equal opportunity. Candidates with disabilities will be preferred in cases where they have the same qualifications as others.

If you are interested in this position, please send an application with the reference no. "Reg.-Nr. 3-1107/16-H" by April 15, 2016, preferably, via email to sekretariat.kumpan@jura.uni-halle.de

or to:
Martin-Luther-Universität Halle-Wittenberg, Juristische und Wirtschaftswissenschaftliche Fakultät, Juristischer Bereich, Lehrstuhl für Bürgerliches Recht, Wirtschaftsrecht, Internationales Privatrecht und Rechtsvergleichung, Universitätsplatz 3-5, 06099 Halle (Saale).

For more information (in German) see http://www.verwaltung.uni-halle.de/dezern3/Ausschr/16_310.pdf.
For further enquiries, please contact Professor Dr. Kumpan: sekretariat.kumpan@jura.uni-halle.de

The Comprehensive Economic and Trade Agreement between the European Union and Canada (CETA): A TDM Special

Editors Andrea Bjorklund, John Gaffney, Fabien Gélinas and Herfried Wöss have prepared a new TDM special, which undertakes a broad-ranging study of CETA as an indicator of the evolution of EU trade and investment policy and of the kinds of tensions and innovations that can be expected to arise as a new generation of twenty-first century trade and investment agreements emerges. The special starts off with an introduction by Professor Pieter Jan Kuijper; The Honourable L. Yves Fortier and Judge Stephen Schwebel.

You can view the table of contents of the TDM CETA special here

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Video From 2015 Journal of Private International Law Conference

As many will know, in September 2015 the University of Cambridge hosted the Journal of Private International Law Conference (see here). Video of the four plenary sessions has now been uploaded to YouTube. The videos can be accessed through these links: first plenary, second plenary, third plenary, fourth plenary.

Study on the laws of national civil procedure of the 28 Member States and the enforcement of European Union law.

The Max Planck Institute Luxembourg, heading an international consortium, is undertaking a **European Commission-funded Study** (JUST/2014/RCON/PR/CIVI/0082) on the laws of national civil procedure of the 28 Member States and the enforcement of European Union law.

The Study has two strands: the first deals with the impact of national civil procedure on **mutual trust and the free circulation of judgments** within the 28 Member States of the EU and the second deals with the impact of national civil procedure on the **enforcement of consumer rights derived from EU law**. Accordingly, the Consortium has prepared two online tools, aimed at gathering information, opinions and experiences (both available in six language versions):

- **Questionnaire focusing on the impact of national procedures on mutual trust and the free circulation of judgments:**
  English
  French
  German
  Italian
  Polish
  Spanish

- **Questionnaire focusing on the impact of national procedures on the enforcement of EU consumer rights:**
  English
  French
  German
  Italian
  Polish
  Spanish

We would encourage consumers, lawyers, judges, academics, consumer protection associations, businesses, business/trade associations, dispute resolution facilitators, and those working in other legal professions (including bailiffs, court clerks, registrars, notaries and so on) to **respond to the questionnaire** for one or both strands of the study.

If you agree, and wish to share more information with us on any of the topics covered by the Study, it will be possible to provide us with your contact details at the end of the survey.

Please feel free to share widely the links to this webpage and to the questionnaires within your own networks.

Labonté on International Assignments

Hendric Labonté has authored a book entitled "Forderungsabtretung International. Art. 14 Rom I-Verordnung und seine Reform" (International Assignments. Art. 14 Rome I Regulation and its Reform). The volume has been published by Mohr Siebeck. It is written in German.

The official abstract reads as follows:

> *The commercial significance of assignments, especially in an international context, requires a straightforward conflict of laws provision. However, art. 14 Rome I does not provide enough certainty, particularly when it comes to third party effects. These should be entirely determined by the law of the underlying debt.*

More information is available on the publisher's website.

Conference for Young PIL Scholars: “Politics and Private International Law (?)” – Call for Papers

The following announcement has been kindly provided by Dr. Susanne Lilian Gössl, LL.M., University of Bonn:

Call for Papers

On 6th and 7th April 2017, for the first time a young scholars’ conference in the field of Private International Law (PIL) will be held at the University of Bonn.

The general topic will be

Politics and Private International Law (?)

We hereby invite interested junior researchers to send us their proposals for conference papers. We envisage presentations of half an hour each in German language with subsequent discussion on the respective subject. The presented papers will be published in a conference transcript by Mohr Siebeck.

Procedure

If we have stimulated your interest we are looking forward to your application to

nachwuchs-ipr(at)institut-familienrecht.de

until **30 June 2016, 12 a.m. CET** (deadline!).

The application shall include an exposé of maximum 1,000 words in German language and shall be composed anonymously that is without any reference to the authorship. The author including his/her position or other affiliation shall be identifiable from a separate file.

Selection decisions will be communicated in October 2016.

For organisational reasons, a preliminary version of the paper (to measure 35,000 to 50,000 characters including footnotes) and the core statements must be received by not later than 31 March 2017.

Topic:

For our purposes, we explicitly understand PIL in a broader sense: international jurisdiction and procedure, the law of the international settlement of disputes (including ADR) as well as uniform law and comparative law and the comparison of legal cultures are included insofar as they allude to cross-border questions.

Ever since Savigny, conflict of laws rules have traditionally been perceived as "unbiased" or "value-neutral" in Central Europe as they are solely supposed to coordinate the applicable substantive law. However, during the second half of the past century the opinion that conflict of law rules may also strengthen or prevent certain results of substantive law has become prevalent. In the U.S., such discussion led to a partial abolition of the "classical" PIL in favour of balancing the individual governmental interests as to the application of their respective substantive law provisions (so called *governmental interest analysis*). But other legal systems have also explicitly or indirectly restricted classical PIL in some areas in favour of governmental interests. Our conference is dedicated to the various possibilities and aspects of this interaction between PIL and politics as well as to the advantages and disadvantages of this interplay.

Possible topics or topic areas are:

<u>General questions:</u>

- "Politicisation" of PIL on the national, European and international level, or the political target of "value-free" PIL rules (?)
- "Politicisation" of comparative law (?)
- Convergence of PIL and Public International Law, especially the protection of fundamental rights and human rights by means of PIL
- Uniform applicable law or harmonisation of PIL
- PIL in day-to-day application of law – theory and reality (?)
- General instruments of PIL to enforce political targets: overriding mandatory rules, public policy, *forum non conveniens*, extensive/narrow

jurisdiction …

- Allocative functions of PIL and International Civil Procedure Law
- Users, stakeholders and their interests in cross-border questions: parties, attorneys, judges, notaries, experts etc.
- Protection by formal requirements or third parties' obligations to cooperate (e.g. notarial recording of the choice of law agreement)
- Parties' or courts' expenses due to the application of foreign law
- Regulatory competition, e.g. in order to establish a national venue of arbitration
- Forum shopping and locational advantages through low standards of protection (e.g. regarding data protection law, copyright law, family law or consumer protection law)
- Issues of competences as regards European PIL rules
- Extraterritorial application of national (private) law (*Kiobel, Bodo Community*)

Business Law:

- Financial crisis, e.g. resolution of globally operating banks
- Gender Quotas of in Corporate Law, e.g. application of German law on foreign companies or comparison between international regulatory models
- Protection of competition in case of worldwide groups operating, e.g. Google antitrust proceedings by FTC and EU Commission
- Law on co-determination within the European context, e.g. questions referred for a preliminary ruling by KG (Court of Appeal in Berlin) and LG Frankfurt
- Worker protection

Family and Inheritance Law:

- Protection of minors, i.e. regarding repatriation of children or international adoptions: successful legal unification (?)
- Cross-border protection of adults
- Application of religious law and judgements of religious courts

Consumer protection:

- Consumer protection and market freedom (i.a. in the Internet)

- Special jurisdiction, party autonomy and the enforcement of minimum standards in substantive law

Internet and new media:

- Territoriality of rights to ubiquitous goods (e.g. copyright law and data protection rules) and cross-border trade
- Copyright Law and “Fair Use”
- Data protection/privacy and freedom of information

Other recent focal points:

- Migration and refugee crisis, e.g. the determination of the law of the person between integration or preservation of cultural identity
- Environmental protection, e.g. enforcement of titles from class actions or international litigation regarding mass damages
- Protection of cultural property – issues regarding ownership and repatriation

For more information, please visit https://www.jura.uni-bonn.de/en/institut-fuer-deutsches-europaeisches-und-internationales-familienrecht/pil-conference/.

If you have any further questions, please contact Dr. Susanne Gössl, LL.M. (sgoessl(at)uni-bonn.de).

We are looking forward to thought-provoking and stimulating discussions!

Yours faithfully,

Susanne Gössl
Rafael Harnos
Leonhard Hübner
Malte Kramme
Tobias Lutzi
Michael Müller
Caroline Rupp
Johannes Ungerer

Schünemann on Company Names in Cross-Border Transactions

Julia Alma Schünemann has authored a book entitled “Die Firma im internationalen Rechtsverkehr. Zum Kollisionsrecht der Firma unter besonderer Berücksichtigung des Rechts der Europäischen Union” (Company Names in Cross-Border Transactions. The Applicable Law to the Name of a Company in the European Union). The Volume has been published in German by Mohr Siebeck.

The official abstract reads as follows:

> *Does an English Limited need to adapt its company name in order to operate in Germany? Julia Alma Schünemann designs an overall concept for dealing with this rarely discussed interface between private and public international and EU law.*

More information is available on the publisher’s website.